IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 581 OF 2004

Keval Fulchand Shah. ... Appellant.

Versus.

The State of Maharashtra & ors. ... Respondents.

Shri Ramesh A.Karale for the Appellant.

Shri K.K.Tated, A.G.P. for Respondent No.1-State.

Shri K.B.Adyanthaya for the Respondents Nos.2 & 3.

CORAM : ABHAY S. OKA, J.

DATED : 23nd February, 2005.

P.C.:

1. Heard the learned Advocates appearing for the parties.

2. The Appeal is filed by the original Plaintiff. The Plaintiff claims to be the owner of a residential flat. On the basis of the Award passed by the Cooperative Court, the suit flat has been attached by the Special Recovery Officer. In the suit filed by the Appellant/Plaintiff in substance the challenge is to the order of attachment.

3. The trial Court held that the suit was not maintainable as remedy was available to the Appellant to prefer a claim under sub-rule 19(a) of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. The trial Court rejected the plaint and the Appeal preferred

by the Appellant/Plaintiff has been dismissed by the District Court.

4. After having heard the learned Advocates appearing for the parties, I find that there is no error in the view taken by the Courts below. If the Appellant has any objection to the attachment he can avail of the remedy under sub-rule 19(a) of Rule 107 of the said Rules of 1961. The Courts below were right in holding that the suit was not maintainable.

5. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

6. If the suit flat is not put to sale till today, the same shall not be done for a period of six weeks from today to enable the Appellant to adopt appropriate remedy.

7. Parties to act on an authenticated copy of the order.

Judge.